

### **REMARKS**

Claims 26, 39, 41, 42 and 45 have been amended. Support for the amendments may be found, for example, at page 3 of the specification. No new matter has been added.

Claims 26, 28-35, 37-39, and 41-48 are pending.

### **CLAIM REJECTIONS**

#### ***Rejection of claims under 35 U.S.C. § 103***

##### ***Midha in view of Gebhard***

The Examiner has rejected claims 26, 28-35 and 37-39 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,986,015 to Midha et al. ("Midha") in view of U.S. Patent No. 5,612,397 to Gebhard et al. ("Gebhard"). See pages 3-6 of the Office Action. Claims 28-35 and 37-38 depend from independent claim 26. Claim 39 is an independent claim.

Claim 26 relates to a cosmetic composition, including a cosmetically acceptable carrier containing: (a) at least one fixing film-forming polymer that is a branched block copolymer consisting essentially of 27.5 to 30.5 mol % of n-butyl acrylate, 26 to 36 mol % of acrylic acid, 33.3 to 45.3 mol % of methacrylic acid, and 0.48 to 0.92 mol % of allyl methacrylate, the polymer having a structure comprising hydrophobic blocks onto which more hydrophilic blocks are attached via bi-functional units, (b) at least one thickening agent that is a cross-linked or non-cross-linked homopolymer or copolymer based on acrylic acid or methacrylic acid or acrylic and methacrylic acid, and (c) at least one co-thickening agent that is a non-cellulosic thickening polymer different from thickening agent (b), wherein the fixing film-forming polymer has at least two glass transition temperatures.

Claim 39 relates to a method for the styling and fixing of hair, including applying to the hair a cosmetic composition including a cosmetically acceptable carrier containing: (a) at least one fixing film-forming polymer that is a branched block copolymer consisting essentially of, 27.5 to 30.5 mol % of n-butyl acrylate, 26 to 36 mol % of acrylic acid, 33.3 to 45.3 mol % of methacrylic acid, and 0.48 to 0.92 mol % of allyl methacrylate, the polymer having a structure comprising hydrophobic blocks onto which more hydrophilic blocks are attached via bi-functional units, wherein the fixing film-forming polymer has at least two glass transition temperatures, (b) at least one thickening agent that is a homopolymer or copolymer based on acrylic acid or methacrylic acid or acrylic and methacrylic acid that is cross-linked or non-cross-linked, and (c) at least one co-thickening agent that is a non-cellulosic thickening polymer

different from thickening agent (b), wherein the composition has a viscosity of at least about 1.9 Pa.s.

Midha describes "an improved method of making hydrophobic and hydrophilic graft polymers ...." See Abstract of Midha. Midha does not teach or suggest a cosmetic composition which includes a cosmetically acceptable carrier containing at least one fixing film-forming polymer that is a branched block copolymer consisting essentially of 27.5 to 30.5 mol % of n-butyl acrylate, 26 to 36 mol % of acrylic acid, 33.3 to 45.3 mol % of methacrylic acid, and 0.48 to 0.92 mol % of allyl methacrylate. Midha further does not teach or suggest a method for the styling and fixing of hair which includes applying to the hair a cosmetic composition including a cosmetically acceptable carrier containing: (a) at least one fixing film-forming polymer that is a branched block copolymer consisting essentially of, 27.5 to 30.5 mol % of n-butyl acrylate, 26 to 36 mol % of acrylic acid, 33.3 to 45.3 mol % of methacrylic acid, and 0.48 to 0.92 mol % of allyl methacrylate.

This defect is not remedied in Gebhard. Gebhard describes a "composition having wet state clarity includes an aqueous latex binder combination of polymer particles with a diameter of less than 80 nanometers and a thickener." See Abstract of Gebhard. Gebhard does not teach or suggest a cosmetic composition which includes a cosmetically acceptable carrier containing at least one fixing film-forming polymer that is a branched block copolymer consisting essentially of 27.5 to 30.5 mol % of n-butyl acrylate, 26 to 36 mol % of acrylic acid, 33.3 to 45.3 mol % of methacrylic acid, and 0.48 to 0.92 mol % of allyl methacrylate. Gebhard further does not teach or suggest a method for the styling and fixing of hair which includes applying to the hair a cosmetic composition including a cosmetically acceptable carrier containing: (a) at least one fixing film-forming polymer that is a branched block copolymer consisting essentially of, 27.5 to 30.5 mol % of n-butyl acrylate, 26 to 36 mol % of acrylic acid, 33.3 to 45.3 mol % of methacrylic acid, and 0.48 to 0.92 mol % of allyl methacrylate.

None of the above-cited references, alone or in combination, teach or suggest a cosmetic composition which includes a cosmetically acceptable carrier containing at least one fixing film-forming polymer that is a branched block copolymer consisting essentially of 27.5 to 30.5 mol % of n-butyl acrylate, 26 to 36 mol % of acrylic acid, 33.3 to 45.3 mol % of methacrylic acid, and 0.48 to 0.92 mol % of allyl methacrylate. None of the above-cited references, alone or in combination, teach or suggest a method for the styling and fixing of hair which includes applying to the hair a cosmetic composition including a cosmetically acceptable carrier containing: (a) at

least one fixing film-forming polymer that is a branched block copolymer consisting essentially of, 27.5 to 30.5 mol % of n-butyl acrylate, 26 to 36 mol % of acrylic acid, 33.3 to 45.3 mol % of methacrylic acid, and 0.48 to 0.92 mol % of allyl methacrylate.

Accordingly, claim 26 and dependent claims thereof and claim 39 are patentable over the combination of Midha and Gebhard for at least the reasons described above.

***Midha in view of Merck***

The Examiner has rejected claims 41-44 under 35 U.S.C. § 103(a) as being unpatentable over Midha in view of Merck Index, 11<sup>th</sup> ed., 1989, monograph 4486 ("Merck"). See Office Action at p. 6. Claims 42-44 depend from independent claim 41.

Claim 41 relates to a cosmetic composition that includes a cosmetically acceptable carrier containing (a) at least one fixing film-forming polymer that is a branched block copolymer consisting essentially of 27.5 to 30.5 mol % of n-butyl acrylate, 26 to 36 mol % of acrylic acid, 33.3 to 45.3 mol % of methacrylic acid, and 0.48 to 0.92 mol % of allyl methacrylate, the polymer having a structure comprising hydrophobic blocks onto which more hydrophilic blocks are attached via bi-functional units, wherein the fixing film-forming polymer has at least two glass transition temperatures, (b) at least one thickening agent that is a cross-linked or non-cross-linked homopolymer or copolymer based on acrylic acid or methacrylic acid or acrylic and methacrylic acid, and (c) at least one co-thickening agent that is guar gum, wherein the composition has a viscosity of at least about 1.9 Pa.s.

As previously discussed, Midha does not teach or suggest a cosmetic composition that includes a cosmetically acceptable carrier containing (a) at least one fixing film-forming polymer that is a branched block copolymer consisting essentially of 27.5 to 30.5 mol % of n-butyl acrylate, 26 to 36 mol % of acrylic acid, 33.3 to 45.3 mol % of methacrylic acid, and 0.48 to 0.92 mol % of allyl methacrylate.

Such a defect is not remedied in Merck. Merck is cited by the Examiner to show that "guar gum is a well-known thickening agent ...." See Office Action at p. 7. Merck does not teach or suggest a cosmetic composition that includes a cosmetically acceptable carrier containing (a) at least one fixing film-forming polymer that is a branched block copolymer consisting essentially of 27.5 to 30.5 mol % of n-butyl acrylate, 26 to 36 mol % of acrylic acid, 33.3 to 45.3 mol % of methacrylic acid, and 0.48 to 0.92 mol % of allyl methacrylate.

None of the above-cited references, alone or in combination, teach or suggest a cosmetic composition that includes a cosmetically acceptable carrier containing (a) at least one fixing film-forming polymer that is a branched block copolymer consisting essentially of 27.5 to 30.5 mol % of n-butyl acrylate, 26 to 36 mol % of acrylic acid, 33.3 to 45.3 mol % of methacrylic acid, and 0.48 to 0.92 mol % of allyl methacrylate.

Since claims 42-44 depend on claim 41, they are patentable over the combination of Midha and Merck for at least the reasons described above.

***Midha in view of Merck and Gebhard***

The Examiner has rejected claims 45-48 under 35 U.S.C. § 103(a) as being unpatentable over Midha in view of Merck and Gebhard. See Office Action at p. 8. Claims 46-48 depend from independent claim 45.

Claim 45 relates to a method for the styling and fixing of hair which includes applying to the hair a cosmetic composition including a cosmetically acceptable carrier containing: (a) at least one fixing film-forming polymer that is a branched block copolymer consisting essentially of 27.5 to 30.5 mol % of n-butyl acrylate, 26 to 36 mol % of acrylic acid, 33.3 to 45.3 mol % of methacrylic acid, and 0.48 to 0.92 mol % of allyl methacrylate, the polymer having a structure comprising hydrophobic blocks onto which more hydrophilic blocks are attached via bi-functional units, (b) at least one thickening agent that is a homopolymer or copolymer based on acrylic acid or methacrylic acid or acrylic and methacrylic acid that is cross-linked or non-cross-linked, and (c) at least one co-thickening agent that is guar gum, wherein the composition has a viscosity of at least about 1.9 Pa.s, wherein the fixing film-forming polymer has at least two glass transition temperatures.

As previously discussed, Midha and Gebhard do not teach or suggest a method for the styling and fixing of hair which includes applying to the hair a cosmetic composition including a cosmetically acceptable carrier containing: (a) at least one fixing film-forming polymer that is a branched block copolymer consisting essentially of 27.5 to 30.5 mol % of n-butyl acrylate, 26 to 36 mol % of acrylic acid, 33.3 to 45.3 mol % of methacrylic acid, and 0.48 to 0.92 mol % of allyl methacrylate. This defect is not remedied by Merck. Merck does not teach or suggest a method for the styling and fixing of hair which includes applying to the hair a cosmetic composition including a cosmetically acceptable carrier containing: (a) at least one fixing film-forming polymer that is a branched block copolymer consisting essentially of 27.5 to 30.5 mol % of n-

butyl acrylate, 26 to 36 mol % of acrylic acid, 33.3 to 45.3 mol % of methacrylic acid, and 0.48 to 0.92 mol % of allyl methacrylate.

None of the above-cited references, alone or in combination, teach or suggest a method for the styling and fixing of hair which includes applying to the hair a cosmetic composition including a cosmetically acceptable carrier containing: (a) at least one fixing film-forming polymer that is a branched block copolymer consisting essentially of 27.5 to 30.5 mol % of n-butyl acrylate, 26 to 36 mol % of acrylic acid, 33.3 to 45.3 mol % of methacrylic acid, and 0.48 to 0.92 mol % of allyl methacrylate.

Since claims 46-48 depend on claim 45, they are patentable over the combination of Midha, Merck and Gebhard for at least the reasons described above.

### CONCLUSION


Applicant believes that the claims are in condition for allowance.

A petition for a three-month extension of time and a Request for Continued Examination (RCE) is also submitted herewith.

Should any fees be required by the present Reply, the Commissioner is hereby authorized to charge Deposit Account 19-4293.

Respectfully submitted,

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